

**DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT
441 4th Street, N.W.
Washington, D.C. 20001**

Appeal by ANC6B

BZA Appeal No. 20549

**D.C. DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS’S
OPPOSITION TO APPELLANT’S MOTION TO AMEND THE APPEAL**

NOW COMES, D.C. Department of Consumer and Regulatory Affairs (“DCRA”) and for its *Opposition to Appellant’s Motion to Amend the Appeal*, states as follows:

Appellant Advisory Neighborhood Commission 6B (“ANC” or “Appellant”) filed a *Motion To Amend Appeal to Incorporate the First Revised Permit B2109853 and Certificate of Occupancy C02102980 and an Updated Statement of Appeal* (collectively the “Motion”).¹ Although the Motion suggests that it is only to add the documents for the record, the Appellant further seeks to broaden the appeal to include many other issues not raised in its original statement of appeal. In its Motion, the Appellant expressly states it seeks to raise “**new allegations** of errors by the Zoning Administrator” as they relate parking and loading.² However, the Appellant’s Motion is a blatant violation of Subtitle 11 DCMR Subtitle Y § 302.13—as it is an impermissible expansion, the Board must deny it.

I. ARGUMENT

A. The Appellant’s Motion Must be Denied as It is Precluded from Amending Its Appeal pursuant to 11 DCMR Subtitle Y §§ 302.5 and 302.13.

The Appellant’s Motion and associated Exhibits are a clear violation of Y §§ 302.5 and 302.13.

Subtitle Y §302.5 provides:

¹ BZA Appeal 20549 – Exhibit 43 and Exhibit 44,

² BZA Appeal 20549 – Exhibit 44 Appellant’s Updated Statement of Appeal, p. 1,

A zoning appeal may only be taken from the first writing that reflects the administrative decision complained of to which the appellant had notice. **No subsequent document, including a building permit or certificate of occupancy, may be appealed** unless the document modifies or reverses the original decision or reflects a new decision (emphasis added).

11 DCMR Subtitle Y §302.5 (emphasis added).

Subtitle Y § 302.13 states:

An appeal **may not be amended to add issues not identified in the statement of the issues on appeal** submitted in response to Subtitle Y § 302.12(g) unless the appellee impeded the appellant’s ability to identify the new issues identified.

11 DCMR Subtitle Y 302.13 (emphasis added)

Turning to this matter, the Appellant is attempting to add the building permit and certificate of occupancy to this appeal—however it fails to state with any specificity how the document(s) reflect a new decision. See, Subtitle Y §302.5. More importantly, Appellant expressly admits that it is adding new issues not identified in its original statement of appeal.³ As the Appellant seeks to expand the appeal in violation of Subtitle Y § 302.13, the Board must deny the Motion on its face.

In its original statement of appeal, the Appellant claimed the Zoning Administrator erred in issuing building permit B2103902 in the following respects:

- 1) Subtitle C § 903.5 loading berths;
- 2) Subtitle C § 904.1 loading platforms;
- 3) Subtitle C § 701.8(a) parking;
- 4) Subtitle U § 801.1(w) residential uses in PDR zones.⁴

³ BZA Appeal 20549 – Exhibit 44 Appellant’s Updated Statement of Appeal, p. 1.

⁴ BZA Appeal 20549 – Exhibit 23 Appellant’s Statement of Appeal, pp. 1-2.

However, in this present Motion, the Appellant attempts to raise a myriad of new claims—not identified in its original statement of appeal, namely:

- 1) Subtitle A§ 301.2(b) building permit application provisions;
- 2) Subtitle B§ 100.2 nonconforming use definition;
- 3) Subtitle B§ 200.2(z) use involving on-site production, distribution, repair;
- 4) Subtitle B 200.22(bb) retail use;
- 5) Subtitle B§ 201.5 rules determining use group;
- 6) Subtitle C§ 201.2 nonconforming use;
- 7) Subtitle C§ 204.1 nonconforming use;
- 8) Subtitle C§ 204.6 discontinuance of a nonconforming use;
- 9) Subtitle C§ 302.4 subdivision regulations;
- 10) Subtitle C§ 712.5 minimum dimensions of full size parking spaces;
- 11) Subtitle C§ 712.6 minimum dimension for compact parking spaces;
- 12) Subtitle C § 904.5 loading berths accessibility from ally;
- 13) Subtitle C§ 905.2 loading berths;
- 14) Subtitle C§ 905.4(d) loading platform floor;
- 15) Subtitle C§ 907 trash room receptacles.⁵

This impermissible attempt to add fifteen new allegations of purported error, flies in the face of Y § 302.13. Moreover, this Board has denied appellants from expanding appeals—precisely as the Appellant seeks in the instant Motion. *See, e.g., BZA Appeal No. 20132 Appeal of*

⁵ BZA Appeal 20549 – Exhibit 44 Appellant’s Updated Statement of Appeal, pp. 1-2.

the Concerned Citizens of Woodridge (Board denied appellants’ attempt to expand the appeal to add additional allegations as they were precluded by Y § 302.13).

II. CONCLUSION

For the foregoing reasons, DCRA prays that the Board deny the Appellant’s Motion.

Respectfully submitted,
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Date: 10/1/21

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CERTIFICATE OF SERVICE

I certify that on this October 1, 2021, a copy of the foregoing was served via electronic mail to:

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